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A "Thrilling" Proposal: Federal Regulation of America's Modern Day Scream Machines

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INTRODUCTION

On August 28, 1999, Kim Bailey and her nine-year-old daughter Jessica waited patiently for their turn to conquer the "Wild Wonder," the dazzling new addition to Gillian's Wonderland Pier amusement park located on the tail end of the boardwalk in Ocean City, New Jersey.[1] Filled with the excitement that many thrill-seekers have come to thrive upon, Kim and Jessica boarded the "Wild Wonder" train and began the slow chain-lifted ascent up the forty-one degree lift hill, eagerly anticipating the first terrifying drop which was surely moments away.[2] Then, in an instant, their anticipation turned to horror.[3] Just as they approached the crest of the incline, their train was released prematurely and instead of experiencing the first drop, Kim, Jessica, and the rest of the riders of the "Wild Wonder" train were rapidly and surprisingly propelled backwards down the forty-one degree lift hill toward the station.[4] As the runaway train fiercely rounded the ninety-degree bend at the base of the lift hill, Kim and her daughter were forcefully ejected from the train and sent hurling through the air into the ride's steel support beams.[5] Both were killed instantly.[6]

The above story is simply one of many that has become all too

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1. *See* Patrick Rogers et al., *Riding for a Fall*, PEOPLE WEEKLY, Sept. 20, 1999, at 66.
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See* Jeff Pillets, *Two Coaster Deaths Blamed on Bad Brake; State Cites Owner, Equipment Manager*, THE RECORD, Feb. 4, 2000, at A1. An investigation into the cause of the accident revealed that the anti-rollback device on the roller coaster failed. As a result, Gillian's Wonderland Pier was fined $25,000 and Zamperla (the Italian company who manufactured the ride) was fined $30,000. *See id.* Today, the "Wild Wonder" roller coaster is no longer in operation at Gillain's Wonderland Pier. *See Fatal Attraction*, THE RECORD, Mar. 17, 2000, at A3. The tragedy which occurred on the "Wild Wonder" roller coaster received national attention. *See, e.g.*, Fred Anklam, *Two Hurt, Two Killed in N.J. Roller Coaster Accident*, USA TODAY, Aug. 30, 1999, at 2A; John Curran, *Inspectors Eye Coaster That Killed Two*, HOUSTON CHRONICLE, Aug. 30, 1999, at 3; John Curran, *Two Killed on Roller Coaster: Mom, Daughter Dead After New Ride's Car Rolls Backward at New Jersey Amusement Park*, DETROIT NEWS, Aug. 30, 1999, at A5; Robert D. McFadden, *Roller Coaster Hurls Wrong Way, Killing Two*, NEW YORK TIMES LATE EDITION, Aug. 30, 1999, at B1.

familiar to the millions of fearless, thrill-seeking Americans who flock to amusement parks from coast to coast each year in anticipation of the spinning, whirling, twisting, and stomach-dropping sensations that modern rides have come to provide.[7] With names like "Goliath," "Medusa," "Cobra," and "Mantis," America's modern thrill-rides are taking consumers on incredible journeys of record-breaking heights at mesmerizing speeds, and, in the process, testing the limits of human endurance.[8] Today's thrill-rides are huge, complex machines capable of hurling riders through the sky at unprecedented speed with remarkable force.[9] Their design, maintenance, and operation often "push the limits of physical tolerance even for patrons in peak condition, let alone members of the broad spectrum of the public who are invited to ride each day."[10] However, despite record-breaking attendance at America's amusement parks and increasing competition among amusement facility owners to be the first to provide millions of willing riders with the tallest, fastest, and steepest attraction, the federal government, as a result of a 1981 amendment to the Consumer Product Safety Act, remains powerless with respect to regulating a majority of these huge, com-

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7. *See, e.g.*, Jeff Gottlieb, *Disneyland Closes Space Mountain After Accident Hurts Nine*, LOS ANGELES TIMES, Aug. 2, 2000, at B3 (addressing Disneyland's decision to temporarily close the famed "Space Mountain" after a car derailment); David M. Herzenhorn, *Five-Year Old Critically Injured in Amusement Park Accident*, NEW YORK TIMES LATE EDITION, July 4, 2000, at B5 (detailing the story of a five-year old who was submerged nearly twenty-five minutes after falling off a tube while riding a water ride at Lake Compounce Amusement Park in Bristol, Connecticut); C. Bryson Hull, *One Killed, Eleven Hurt After Six Flags Ride Capsizes*, HOUSTON CHRONICLE, Mar. 22, 1999, at A17 (providing the details of what happened when a boat on an amusement ride overturned in waist-deep water at Six Flags Over Texas); Brenden Sager, *Thirty-Five Hurt on Kennywood Coaster*, PITTSBURGH POST GAZETTE, July 9, 1999, at A1 (discussing the injuries sustained by riders after the collision of two trains on the legendary Thunderbolt roller coaster at Kennywood Park just outside of Pittsburgh, Pennsylvania).

8. Approximately fifty-five new roller coasters opened in the United States between January 1, 2000 and October 11, 2000. One of these roller coasters, "Millennium Force 2000" at Cedar Point in Sandusky, Ohio, opened on May 13, 2000, as the tallest, steepest, and fastest steel roller coaster in the world with a height of 310 feet and an estimated speed of ninety-two miles per hour. *See* Alice Lukens, *A Roller-Coaster Ride on Safety*, THE BALTIMORE SUN, May 22, 2000, at 2A (discussing the "Millennium Force 2000" as well as the National Amusement Ride Safety Act which is currently pending in the United States House of Representatives); *The Roller Coaster Data Base* (visited Mar. 11, 2001) <http://www.rcdb.com> (a comprehensive searchable database with information and statistics on roller coasters in North America).

9. *See* 145 CONG. REC. E2042 (daily ed. Oct. 6, 1999) (statement made by Representative Edward Markey of Massachusetts when introducing "The National Amusement Park Ride Safety Act").

10. *See id.*

plex modern day scream machines.[11]

This comment argues that the United States Congress should grant the Consumer Product Safety Commission ("CPSC") the power to regulate the construction and operation of rides permanently fixed to amusement locations in the United States.[12] The following paragraphs will demonstrate that the granting of such power by the United States Congress to the CPSC is not only permitted under the Commerce Clause of the United States Constitution, but will also serve the important function of eliminating the current inadequacies and gross disparities which have arisen between the states with respect to the regulation of amusement rides permanently fixed to a site.[13] The plan of this comment is as follows: Section I examines the current "crisis" in the amusement industry in more detail (including some of the recent major accidents that are summarized in Table A) and then discusses federal and state approaches to regulating amusement rides permanently fixed to a location. In this section, the current proposal before the United States House of Representatives regarding regulation of permanent amusement rides is discussed in detail, and then the approaches taken by the fifty states with respect to regulation of amusement rides permanently fixed to a site are examined briefly. The results of this examination are presented in Table B. In section II, a discussion of the Commerce Clause of the United States Constitution is presented as a basis for obtaining federal jurisdiction to regulate rides permanently fixed to amusement sites. This section also sets out additional reasons for federal intervention in the amusement industry. Finally, section III offers some concluding remarks.

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11. *See* 15 U.S.C. §§ 2051-81 (2000). After a dispute by the courts as to whether amusement rides were a "product" as defined under the Consumer Product Safety Act, Congress amended the Act in 1981 to include within the definition of product only amusement rides not permanently fixed to a site. *See* 15 U.S.C. § 2052(a)(1) (2000); *infra* notes 25-72.

12. The federal government currently has the power under the Consumer Product Safety Act to regulate only amusement rides that are not permanently attached to a site (for example, rides erected at traveling carnivals). Under the current version of the Consumer Product Safety Act, a consumer product is defined to include, in relevant part:

> [A]ny mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site.

See 15 U.S.C. § 2052(a)(1) (2000).

13. Article I, Section 8 of the United States Constitution (the Commerce Clause) gives Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." *See* U.S. CONST. art I, § 8, cl. 3.

I. BACKGROUND

A. *The Current "Crisis" in the Amusement Industry*

There is clearly a crisis in the amusement industry as evidenced by the increased number of ride-related injuries and fatalities over the past six years (see Table A describing selected accidents at America's theme parks over the past three years). In 1998, there were an estimated 9,200 ride-related injuries, representing a twenty-four percent jump from 7,400 injuries in 1994 (even though attendance during the period only rose twelve percent).[14] The data for 1999 indicates that this trend is continuing into the new millennium. In the calendar year 1999, roughly 309 million individuals frequented the roughly 405 amusement parks in the United States in hopes of being safely entertained by the mammoth attractions that many of these modern amusement parks have come to provide.[15]

While many of these patrons likely assumed the entertainment they were pursuing was safe, an alarming number of them went home injured, and in a few rare instances some of them did not return home at all. According to a report issued by the CPSC in July of 2000, there were 10,400 hospital emergency room-treated injuries stemming from amusement accidents in 1999, with about 7,000 of these injuries involving fixed rides and 3,000 involving mobile rides.[16] These numbers, which have alarmed the CPSC, illustrate "a marginally significant upward trend in fixed-site and total amusement ride-related injuries and in the risk of fixed-site injury defined as the estimated number of injuries per million attendance at amusement parks."[17]

While the numbers presented by the CPSC regarding ride-related injuries in 1999 are certainly alarming, even more alarming is the number of ride-related fatalities that occurred at America's amusement parks in 1999. In 1999 alone, six individuals lost their lives in ride-related accidents at amusement parks.[18] Four of these deaths occurred in the final week of August 1999, a week that U.S. News

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14. *See* Marc Silver et al., *Fatal Attractions: Are Amusement Park Rides Unsafe at Any Speed?*, U.S. NEWS AND WORLD REPORT, Sept. 13, 1999, at 10 (reviewing the tragic accidents at amusement parks in 1999 and the responses that these tragedies generated).

15. *See* Anthony DeBarros and Gene Sloan, *Park Safety Rules Lax*, USA TODAY, Apr. 7, 2000, at 1A (discussing the inadequacies and inconsistencies in current state laws regulating the amusement industry).

16. *See* C. CRAIG MORRIS, U.S. CONSUMER PROD. SAFETY COMM'N, AMUSEMENT RIDE RELATED INJURIES AND DEATHS IN THE U.S.: 1987-1999 (July 2000) at 2.

17. *See id.* at 8.

18. *See* Silver, *supra* note 14, at 10-11.

and World Report deemed "one of the calamitous weeks in the history of America's amusement parks."[19] In that week alone, a twelve-year-old boy was killed after plummeting nearly 200 feet from the "Drop Zone Stunt Tower" at Paramount's Great American Park in Santa Clara, California, a mother and daughter were killed when the "Wild Wonder" roller coaster at Gillian's Wonderland Pier in Ocean City, New Jersey, unexpectedly malfunctioned, and a twenty-year-old man was killed after wiggling loose from a harness while riding the "Shockwave" roller coaster at Paramount's Kings Dominion near Richmond, Virginia.[20]

The alarming increases in ride-related injuries and fatalities have led many to call for increased regulation. In terms of regulation, "there is currently no federal oversight of amusement parks and only limited regulation of smaller, traveling carnival shows."[21] In other words, current regulation of amusement parks is left to the states, which are in many cases doing a poor job of ensuring that modern thrill-rides adequately protect riders from the dangers associated with the "thrills, chills, and spills" which amusement rides by nature are designed to provide. Examples of lax regulation for both mobile and fixed amusement rides are numerous. For example, a patchwork of state laws enables ride owners to easily evade state inspection and regulation of mobile rides by moving into a state that currently has no inspection laws.[22] In many states where inspection and regulation laws are rigorous, the biggest entertainers in the industry are still legally able to evade inspection and regulation.[23] Furthermore, because of wide variation in the language of state laws regulating the amusement industry, no consistency exists and thus it is difficult for safety officials to "pinpoint which parks and which rides are problems."[24] This evasion and inconsistency, coupled with an increase in amusement accidents and evidence that more rigid inspection and regulation requirements may lead to a reduction in such accidents, has led many individuals to begin to call for complete federal oversight of the amusement industry (specifically federal regulation of rides permanently fixed to an amuse-

19. *See id.*

20. *See id.*

21. *See* DeBarros and Sloan, *supra* note 15, at 2A.

22. *See id.*

23. *See id.* "Take for example Florida, which has one of the nation's most respected programs. Although the state exempts big parks such as Disney World, it keeps a close eye on almost everyone else." *Id.*

24. *See id.*

ment site).

B. *Federal Regulation of Amusement Rides Permanently Fixed to a Site*

The origins of federal government intervention with the construction and operation of amusement rides lies with the passage of the Consumer Product Safety Act by the United States Congress in October of 1972.[25] In a response to a study undertaken by the National Commission on Product Safety, Congress sought to protect the public against risks associated with consumer products, to develop a uniform system for reporting injuries sustained by consumers while using certain products, and to promote research aimed at reducing product-related injuries.[26] In order to achieve these goals, Congress (through the passage of the Consumer Product Safety Act) authorized the creation of the CPSC and gave this agency the power to investigate consumer products that appeared to pose an unreasonable risk of injury to the public.[27] While the Consumer Product Safety Act as passed in 1972 defined the term "product" in a very broad manner, no specific mention was made with respect to amusement rides.[28] After several accidents involving amusement rides prompted investigation by the CPSC, the courts were faced with the issue as to whether or not Congress, through the Consumer Product Safety Act, had in fact granted the CPSC the

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25. *See* 15 U.S.C. §§ 2051-81 (1972) (current version at 15 U.S.C. §§ 2051-81 (2000)).

26. *See* 15 U.S.C. § 2051(b) (2000). The purpose of this Act was and still is:

> (1) to protect the public against unreasonable risk of injuries associated with products; (2) to assist consumers in evaluating the comparative safety of consumer products; (3) to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations; and (4) to promote research and investigation into the causes and prevention of product related deaths, illnesses, and injuries.

See id.

27. *See* Susan J. Reiss, *Amusement Park Safety: Who Should Regulate?*, 5 CARDOZO ARTS AND ENTERTAINMENT LAW JOURNAL 195, 197 (1985) (providing a detailed history of the Consumer Product Safety Act as the Act relates to the ability of the federal government to regulate amusement rides).

28. *See* 15 U.S.C. § 2052(a)(1) (1972) (current version at 15 U.S.C. § 2052(a)(1) (2000)). Under the 1972 version of the Consumer Product Safety Act, the term "consumer product" referred to:

> [A]ny article, or component thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption, enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise . . .

See id.

power to investigate amusement related accidents.[29] Park owners and manufacturers, resisting federal interference in their industry, challenged the jurisdiction of the CPSC to investigate such accidents. The CPSC responded by arguing that it had power to investigate because of the broad definition of the term "product" under the Consumer Product Safety Act.[30] The courts would ultimately be split as to whether an amusement ride fit the definition of product under the Consumer Product Safety Act.[31]

In November of 1977, the United States District Court for the District of Columbia became one of the first courts to address this issue in *Consumer Product Safety Commission v. Chance Manufacturing Co.*[32] In *Chance*, the CPSC filed an action against Chance Manufacturing Co. alleging that the "Zipper" ride that the company produced and distributed to amusement facilities across the country was "imminently hazardous" as defined under the Consumer Product Safety Act.[33] The CPSC requested that the court, in accordance with the Consumer Product Safety Act, enjoin operation of any "Zipper" ride until Chance Manufacturing Co. took corrective measures, satisfactory to the CPSC, to ensure that the "Zipper" ride

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29. *See* Reiss, *supra* note 27, at 199.

30. *See id.* at 198-99. Apparently, the CPSC felt that the Consumer Product Safety Act gave it jurisdiction to investigate any accidents involving amusement rides. *See* CPSC Advisory Opinion No. 225 (October 21, 1975) (holding that paddle boats used as amusement rides constituted a product within the meaning of the Consumer Product Safety Act so long as such usage did not fall within the confines of the Federal Boat Safety Act); CPSC Advisory Opinion No. 153 (November 13, 1974) (stating that amusement rides are "recreation" and therefore fall within the definition of product under the Consumer Product Safety Act regardless of whether the consumer pays to ride).

31. *Compare* Consumer Prod. Safety Comm'n v. Chance Mfg. Co., 441 F. Supp. 228 (D.D.C. 1977) (holding that the CPSC had the power under the Consumer Product Safety Act to enjoin operation of the "Zipper" ride), *and* State Fair of Texas v. Consumer Prod. Safety Comm'n, 650 F.2d 1324 (5th Cir. 1981) (holding that the "Swiss Skyride" was a product which fell within the definition of the Consumer Product Safety Act), *with* Robert K. Bell Enter. v. Consumer Prod. Safety Comm'n, 645 F.2d 26 (10th Cir. 1981) (where the appellate court found that the "Skyride" amusement ride that took visitors between points within an amusement park was not a consumer product for the purposes of the Consumer Product Safety Act), *and* Walt Disney Prod. v. Consumer Prod. Safety Comm'n, No. 79-0170-LEW-(Px), 1979 U.S. Dist. LEXIS 12996 (C.D. Ca. Apr. 17, 1979) (also holding that the "Skyride" amusement ride was not a consumer product which could be regulated by the CPSC under the Consumer Product Safety Act).

32. 441 F. Supp. 228 (D.D.C. 1977).

33. *See id.* at 229. The "Zipper" ride consisted primarily of a base with attached cars rotating in a 360-degree arc. The CPSC alleged that because of some faulty door latching systems on the attached cars, four individuals were killed and two others seriously injured. *See id.* at 230-31. The "term 'imminently hazardous product' means a consumer product which presents imminent and unreasonable risk of death, serious illness or severe personal injury." *See* 15 U.S.C. § 2061(a) (2000).

no longer posed a hazard to riders.[34] Chance Manufacturing Co. responded by questioning the jurisdiction of the CPSC to recommend any such corrective measures, arguing that the "Zipper" ride was not a consumer product within the meaning of the Consumer Product Safety Act.[35]

In holding that the "Zipper" ride was subject to regulation by the CPSC, the court first noted that the ride had "never been sold to individual consumers nor used except in recreation."[36] Therefore, according to the court, the only way the CPSC could have authority to regulate the "Zipper" ride under the Consumer Product Safety Act would be if the ride was distributed "for the personal use, consumption or enjoyment of a consumer . . . in recreation or otherwise."[37] Because both parties agreed that the "Zipper" ride was used in recreation and because the court found that the riders of the "Zipper" were exposed to the potential dangers outlined by the CPSC (thereby satisfying the personal use element), the court concluded that the CPSC could regulate the "Zipper" ride.[38] For further support, the court scrutinized the legislative history of the Consumer Product Safety Act, attempting to determine the intent of Congress in passing the Act.[39] The revelation that both Houses of Congress intended that the definition of consumer product "be construed broadly to advance the Act's articulated purpose of protecting consumers from hazardous products," was further evidence used by the court to solidify the decision that the CPSC could regulate the "Zipper" ride if, in fact, the ride was determined to be "imminently dangerous."[40]

Similarly, the United States Court of Appeals for the Fifth Circuit found that amusement rides fall within the definition of "product"

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34. *See Chance Mfg. Co.*, 441 F. Supp. at 229. Under the Consumer Product Safety Act where the CPSC brings an action alleging that a product is "imminently hazardous" as defined under the Consumer Product Safety Act:

> The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product . . . and to grant such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of the risk to purchasers of such product known to the defendant, public notice, the recall, the repair or replacement of, or refund for, such product.

See 15 U.S.C. § 2061(b)(1) (2000).

35. *See Chance Mfg. Co.*, 441 F. Supp. at 229.

36. *Id.* at 231.

37. *Id.*

38. *Id.* at 232-33.

39. *Id.* at 231-32.

40. *See Chance Mfg. Co.*, 441 F. Supp. at 231.

as defined under the Consumer Product Safety Act in *State Fair of Texas v. Consumer Product Safety Commission*.[41] In this case, the court offered several reasons as to why the CPSC had the authority to investigate and obtain documents relating to an amusement accident which occurred on an aerial tramway ride (the "Swiss Skyride") located at the State Fair in Texas.[42] First, the court reasoned that the "Swiss Skyride" was indeed an article, rejecting the argument presented by Steck and Staph Attractions (the operators of the ride) that amusement rides could not be articles under the Consumer Product Safety Act because of their sheer size.[43] Second, the court noted that the "Swiss Skyride" was distributed and used by consumers.[44] With respect to distribution, the court reasoned that the ride was in fact customarily produced for use in amusement parks and was therefore not, as Steck and Staph Attractions suggested, exempt from regulation by the CPSC under any of the exemptions provided for in the Consumer Product Safety Act.[45] Furthermore, the court noted that since riders enjoyed the benefit of being transported from one end of the park to another (and the view during the transportation), the riders received enjoyment from the ride.[46]

The court then proceeded to reject an argument by the ride operators that the ride was not within the definition of "product" as defined by the Consumer Product Safety Act because it was not used for recreation but instead only for transportation.[47] Additionally, the court denied a request by Steck and Staph Attractions to interpret and apply other sections of the Consumer Product Safety Act (those dealing with the requirement that the CPSC be able to obtain a free sample of a product or obtain a product at cost) to the case at hand, stating that these sections were wholly irrelevant

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41. *See* 650 F.2d 1324 (5th Cir. 1981).

42. *Id.* at 1325-26.

43. *Id.* at 1329. The court reasoned that because Congress found it necessary to specifically exempt aircraft and boats from the definition of consumer product, size is not a defining limitation to the term "article." *Id.*

44. *Id.*

45. *Id.* at 1330. Specifically, the operators argued that the "Skyride" was not a "product" as the term is defined under the Consumer Product Safety Act because a specific exception in the Act excludes from the authority of the CPSC "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of a consumer." *See* 15 U.S.C. § 2052(a)(1)(A) (2000).

46. *State Fair of Texas*, 650 F.2d at 1331. The court noted that "not only do passengers use the 'Skyride' but they also enjoy it for sight-seeing and benefit of being transported." *Id.*

47. *Id.* at 1331.

and would only produce puzzling results in the instant case.[48] After summarizing these reasons and briefly referencing the legislative history of the Consumer Product Safety Act, the court concluded that the "Swiss Skyride" could be regulated by the CPSC in accordance with the Consumer Product Safety Act.[49]

Despite the consistency in the holdings of the United States District Court for the District of Columbia and the Court of Appeals for the Fifth Circuit, federal regulation of amusement rides by the CPSC was still in question, as other federal courts reached results contrary to those of the *Chance* and *State Fair of Texas* courts. For example, in *Walt Disney Productions v. Consumer Product Safety Commission*,[50] a federal district court in California found the "Skyride," a common device at many amusement parks used to transfer patrons from one end of the park to another, was not, as the Fifth Circuit held, a "product" as defined under the Consumer Product Safety Act.[51] The trial court relied on sections of the Consumer Product Safety Act which allow the CPSC to obtain free samples of consumer products and purchase consumer products at cost. Recognizing that the CPSC could obviously not obtain a free sample of the "Skyride" (nor obtain the "Skyride" at cost), the court reasoned that such a ride could not possibly be included within the definition of product under the Consumer Product Safety Act.[52]

In *Robert K. Bell v. Consumer Product Safety Commission*,[53] the United States Court of Appeals for the Tenth Circuit reached the same conclusion as the *Walt Disney* court regarding CPSC regulation of amusement rides under the Consumer Product Safety Act but rationalized the result differently. In *Bell*, the CPSC sent a request for information to Bell Enterprises regarding an accident involving an amusement park tramway in Texas (another "Skyride").[54] In response to this request, Bell Enterprises sought a declaratory judgment by contending that the Consumer Product Safety Act did not apply to amusement parks or amusement park rides and that, consequently, the CPSC lacked jurisdiction to inves-

48. *Id.* at 1332. Under the Consumer Product Safety Act, the CPSC is authorized to obtain free samples of imported consumer products and purchase domestic consumer products at cost. *See* 15 U.S.C. § 2066(b) (2000); 15 U.S.C. § 2067(f) (2000).

49. *State Fair of Texas*, 650 F.2d at 1333-34.

50. No. 79-0170-LEW-(Px), 1979 U.S. Dist. LEXIS 12996 (C.D. Ca. Apr. 17, 1979).

51. *Id.* at 7-8.

52. *Id.* at 5-6. *See generally* 15 U.S.C. § 2066(b) (2000); 15 U.S.C. § 2067(f) (2000).

53. 645 F.2d 26 (10th Cir. 1981).

54. *See id.* at 27.

tigate the accident on the "Skyride."[55] The appellate court (in overruling the trial court) agreed with Bell Enterprises by finding that amusement rides were not encompassed within the term product as defined under the Consumer Product Safety Act.[56]

Implicitly recognizing (as the court in *Chance* did) that the "Skyride" was not sold to individual consumers and was only used in recreation, the appellate court in *Bell* noted that the decision as to whether the ride was a product within the definition of the Consumer Product Safety Act would ultimately hinge on the "personal use, consumption, or enjoyment" clause of the definitional section of the Act.[57] After examining the legislative history of this definitional section, the court concluded this section was added "not for the purpose of enlarging the scope of the articles, but to cover all manners of distribution."[58] That is, according to the court, the "personal use, consumption, or enjoyment" clause was intended to encompass the same articles that were covered under the "sale" clause but which reached consumers through means other than sales (such as promotional samples or gifts).[59] Using this rationale, the court concluded that the CPSC could not use the "personal use, consumption, or enjoyment" clause to obtain jurisdiction over amusement rides because such rides were not in any manner "distributed" to consumers.[60] In addition, the *Bell* court elected to give special consideration to the fact that riders are generally not in control and possession of amusement rides at any given time.[61] Because the court determined that control and possession were important factors to consider in analyzing whether an object can be deemed a product within the definition of the Consumer Product Safety Act, the CPSC could not obtain jurisdiction to investigate amusement rides without a showing that the rider was in control of the ride.[62] A final reason provided by the court for rejecting the ability of the CPSC to investigate the "Skyride" accident centered on the court's interpretation that the Consumer Product Safety Act was intended to cover only articles used "in or around . . . a house-

55. *See id.*

56. *See id.* at 29. *See generally* Robert K. Bell Enter. v. Consumer Prod. Safety Comm'n, 484 F. Supp. 1221 (N.D. Okla. 1980).

57. *Id.* at 28.

58. *See* Reiss, *supra* note 27, at 200.

59. *Robert K. Bell Enter.*, 645 F.2d at 28-29.

60. *Id.*

61. *Id.* at 29.

62. *Id.*

hold or residence."[63]

With federal courts across the nation split regarding the ability of the CPSC to regulate amusement rides under the Consumer Product Safety Act, the United States Supreme Court was set to definitively decide the issue in 1981.[64] However, just prior to oral arguments before the Court, the United States Congress amended the Consumer Product Safety Act.[65] The 1981 amendments to the Consumer Product Safety Act, an apparent attempt to clarify the inconsistent federal court decisions from across the nation, added a section that made clear that the CPSC only had jurisdiction to regulate amusement rides not permanently fixed to a site.[66] Because the 1981 amendments to the Consumer Product Safety Act were passed as part of the Omnibus Legislation Act of 1981, the rationale behind the decision of the United States Congress to limit the power of the CPSC to regulate only rides not permanently fixed to a site is unclear.[67] However, at least one scholar has suggested that this decision was the product of legislative compromise, premised upon the belief that because mobile amusement rides move frequently across state lines, the need for federal regulation of such rides was stronger than the need to regulate rides permanently fixed to a site, which the states could do with ease.[68]

While there was some indication in the mid-1980's that the United States Congress might restore jurisdiction to the CPSC to regulate amusement rides at fixed sites, bills introduced in the United States House of Representatives and United States Senate were ultimately rejected for various reasons.[69] From the mid-1980's through the late 1990's, the United States Congress gave little attention to the issue of amusement ride safety; that is until October of 1999 when Representative Edward Markey from Massachusetts introduced "The National Amusement Park Ride Safety Act."[70] Mar-

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63. *See id.*

64. *See* Reiss, *supra* note 27, at 202. The United States Supreme Court was set to hear *State Fair of Texas v. Consumer Product Safety Commission*, 650 F.2d 1330 (5th Cir. 1981), on appeal but the 1981 amendments were passed just prior to oral argument. Consequently, the "judgment was vacated and the case was remanded to the trial court with direction to dismiss it as moot." *See id.* at n.67.

65. *See* 15 U.S.C. § 2052(a)(1) (2000).

66. *See* Reiss, *supra* note 27, at 202.

67. *See id.* at 203.

68. *See id.* at n.70 (discussing information obtained from interviews that the author conducted with those close to the amendment process in 1981).

69. *See id.* at 212-19 (summarizing the various proposals before the United States Congress in the mid-1980's with respect to federal regulation of permanent amusement rides).

70. H.R. 3032, 106th Cong. (1999).

key's bill is aimed at "closing the loophole" created by the 1981 amendments to the Consumer Product Safety Act by restoring jurisdiction to the CPSC to regulate the operation and construction of permanent amusement rides.[71] Currently the bill is being debated in House Committee hearings and, thus, at the present time the power to regulate permanent amusement rides still remains, as a result of the 1981 amendments to the Consumer Product Safety Act, within the sole discretionary power of each individual state.[72]

C. State Approaches to Regulating Permanent Amusement Rides

Table B summarizes the current status of state laws regulating mobile rides and rides permanently fixed to a site in the United States. Currently, eleven states have no laws requiring inspection of rides permanently fixed to an amusement site.[73] In addition, eight states have no specific requirements (such as insurance minimums or permit requirements) that must be met before a ride is placed into operation.[74] In the remaining states that do require inspection and/or impose pre-ride operation requirements, there is no general consensus as to how much insurance should be required and what requirements should be imposed before a ride can be operated. A random sampling of state laws, with a bit of background on amusement parks in the state, illustrates this inconsistency.

The State of California is home to a multitude of amusement parks, including some of the most well known in the nation such as Disneyland, Paramount's Great America, and Six Flags Magic Mountain.[75] California "provides a comprehensive approach subjecting amusement parks with permanent amusement rides to the authority of Cal-OSHA."[76] Under the California program, annual

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71. *Id.* Specifically, the bill amends the Consumer Product Safety Act to include amusement rides that are permanently fixed to a site within the definition of "consumer product," thereby giving the CPSC jurisdiction over such rides. Additionally, the bill authorizes the appropriations necessary ($500,000) to fund CPSC regulation of permanent amusement rides. *Id.*

72. The most recent activity with respect to the bill occurred on May 16, 2000, when a hearing was held in front of the House Subcommittee on Telecommunications, Trade, and Consumer Protection. *See* 146 CONG. REC. D474 (daily ed. May 16, 2000).

73. *See* Consumer Product Safety Commission, *Directory of State Amusement Ride Safety Officials* (visited Mar. 11, 2001) <http://www.cpsc.gov/cpscpub/pubs/amuse.html>.

74. *See id.*

75. *See* THE AMERICAN COASTER ENTHUSIASTS, GUIDE TO RIDE 2000 34-42 (Digital Prepress, 2000).

76. *See* David Kremenetsky, *Regulation of Permanent Amusement Park Rides*, 31 MCGEORGE LAW REVIEW 633, 635 (discussing California's approach to regulating amusement rides permanently fixed to a site).

inspections of rides permanently fixed to a site by a qualified safety inspector are required.[77] Additionally, a ride owner must show proof of insurance before the ride can be operated and must maintain accurate records of any accidents that occur on the ride (in addition to establishing programs that will adequately train park employees to run the ride).[78]

North Dakota lacks an established amusement park and, consequently, imposes little requirements on the operation of amusement rides in the state. Under the North Dakota statute, "no person may operate an amusement ride unless that person has filed with the governing body of the city or county where that person is intending to operate the amusement ride an affidavit that the ride has been inspected by a qualified inspector" and that a current insurance policy exists insuring the owner against liability for an accident occurring on the ride.[79] The statute also requires owners of rides to keep records on maintenance operations, inspections, and serious accidents.[80]

Ten amusement parks are located in the State of Ohio, including Cedar Point in Sandusky, Ohio — the home of fourteen roller coasters including the "Millennium Force 2000," which at the time of its opening in May of 2000 was the tallest, steepest, and fastest roller coaster in the world.[81] Perhaps as a result of the numerous parks in Ohio and the record-breaking nature of many rides at Ohio parks (such as the "Millennium Force 2000"), the Ohio statute regulating rides at amusement parks is fairly stringent.[82] Under the Ohio statute, an advisory council on amusement ride safety is mandated and its purpose is to investigate subjects "pertaining to amusement ride safety, including administrative, engineering, and technical subjects, and make findings and recommendations to the director of agriculture."[83] Furthermore, the statute requires the owner of an amusement ride to apply for an annual permit and submit to an inspection by a state official prior to the opening of a ride each season.[84] In addition, before the permit will be issued, the ride

77. CAL. LAB. CODE § 7924 (West Supp. 2000).

78. CAL. LAB. CODE §§ 7926-27 (West Supp. 2000).

79. N.D. CENT. CODE § 53-05.1-02 (2000).

80. N.D. CENT. CODE § 53-05.1-03 (2000).

81. *See* Alice Lukens, *A Roller-Coaster Ride on Safety*, THE BALTIMORE SUN, May 22, 2000, at 2A (discussing the "Millennium Force 2000" roller coaster); THE AMERICAN COASTER ENTHUSIASTS, *supra* note 75, at 79-82.

82. OHIO REV. CODE ANN. §§ 1711.50-1711.99 (West 1997).

83. OHIO REV. CODE ANN. § 1711.52 (West 1997).

84. OHIO REV. CODE ANN. § 1711.53 (West 1997).

owner must provide an insurance certificate indicating that an adequate amount of insurance has been purchased to cover any accidents that may occur on the ride.[85] Finally, the statute imposes a requirement on owners of rides to maintain up-to-date copies of accident reports, inspections, and temporary cessation orders.[86]

In 1985, the Pennsylvania legislature passed the "Amusement Ride Inspection Act" which is similar to the Ohio statute.[87] Under the Pennsylvania statute, an amusement ride safety board exists to carry out the provisions of the Act.[88] Under the Act, the Department of Agriculture is to oversee the operation of amusement rides and ensure that the owner of each ride has applied for a permit, has the ride inspected on a monthly basis, and carries a minimum insurance amount to insure the ride owner against any liability stemming from accidents that occur on the ride.[89] Furthermore, the Act requires the ride owner to shut down a ride when a serious injury or death occurs and authorizes the Department of Agriculture to issue a stop-use order when a ride owner is found to be in violation of the Act.[90]

In South Dakota, where amusement parks are few and far between, a liability insurance requirement exists whereby no individual may in any case own, operate or lease an amusement ride unless the person purchases insurance in an amount not less than one million dollars against liability for injury or death to persons arising out of the use of the amusement ride.[91] While the South Dakota statute requires a minimum insurance amount, it leaves the right to inspect amusement rides to the discretion of local municipalities or counties.[92]

II. Federal Regulation of Permanent Amusement Rides

A. *The Power of the Federal Government to Regulate Under the Commerce Clause*

In order to survive constitutional challenge by the amusement industry or any other interested party with standing to challenge

85. Ohio Rev. Code Ann. § 1711.54 (West 1997).
86. Ohio Rev. Code Ann. § 1711.55 (West 1997).
87. 4 Pa. Stat. Ann. §§ 401-419 (West 1995).
88. 4 Pa. Stat. Ann. § 405 (West 1995).
89. 4 Pa. Stat. Ann. § 407 (West 1995); 4 Pa. Stat. Ann. § 414 (West 1995).
90. 4 Pa. Stat. Ann. § 407 (West 1995).
91. S.D. Codified Laws § 42-10-2 (Michie 1991).
92. S.D. Codified Laws § 42-10-3 (Michie 1991).

federal interference, any regulation by the federal government regarding fixed amusement rides must be firmly grounded in the United States Constitution.[93] A brief analysis of the United States Constitution suggests that such regulation would be constitutionally permissible given the language of Article I, Section 8 of the United States Constitution (the Commerce Clause).[94] Article I, Section 8 of the United States Constitution definitively gives Congress the distinct power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[95] Because the federal government already has the power, pursuant to the Consumer Product Safety Act and the Commerce Clause, to regulate the construction and operation of mobile amusement rides, logic suggests that the same sources of authority should be available to Congress as a basis for justifying federal regulation of permanent amusement rides.[96] However, because there is an obvious distinction between mobile amusement rides and permanent amusement rides, an analysis of judicial interpretation of the Commerce Clause is necessary in order to ensure that the federal government can, in fact, constitutionally regulate permanent amusement rides.[97]

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93. Standing is "a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court; it is the right to take the initial step that frames the legal issues for ultimate adjudication by court or jury." *See* BLACK'S LAW DICTIONARY 1405 (6th ed. 1990).

94. U.S. CONST. art I, § 8, cl. 3.

95. *Id.*

96. The ability of the federal government to regulate under the Consumer Product Safety Act is clearly grounded in the Commerce Clause of the United States Constitution. The Consumer Product Safety Act states in relevant part:

> The Congress finds that: (1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce; (2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately; (3) the public should be protected against unreasonable risks of injury associated with consumer products; (4) control by state and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers; (5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injuries is inadequate; and (6) regulation of consumer products the distribution of which affects interstate or foreign commerce is necessary to carry out this chapter.

15 U.S.C. § 2051(a) (2000).

97. Rides located at carnivals, fairs, or festivals are referred to in the amusement industry as mobile amusement rides because they are frequently moved from one site to another, often crossing state borders in the process. Rides located at amusement parks are referred to in the amusement industry as permanent amusement rides since they remain at the same location for extended periods of time. Note that it is possible for the same type of ride to be a mobile amusement ride in one situation and a permanent amusement ride in another (consider the ever popular "Ferris Wheel"). *See* C. CRAIG MORRIS, U.S. CONSUMER

While only current judicial interpretation of the Commerce Clause is relevant to the ability of the federal government to regulate permanent amusement rides, a brief historical analysis is nonetheless required in order to understand the full scope of the Commerce Clause. The first major case construing the Commerce Clause came in 1824 when the United States Supreme Court decided *Gibbons v. Ogden*.[98] The *Gibbons* case involved a conflict between Ogden, who had been granted a monopoly right by the State of New York to operate steamboats between New York and New Jersey, and Gibbons, who began operating steamboats (which were licensed under a federal statute) between New York and New Jersey.[99] After the state court granted an injunction ordering Gibbons to stop operating his boats in New York waters, Gibbons appealed to the United States Supreme Court.[100] In a landmark decision, Justice Marshall upheld the right of Gibbons to operate his steamboats in New York waters, holding that the Commerce Clause was to be construed broadly (and thus the federal license granted to Gibbons superceded the state monopoly rights granted to Ogden).[101] According to Justice Marshall, Congress could constitutionally regulate any interstate commerce (even if the regulation were to affect matters occurring within a state) as long as the activity had some commercial connection with another state.[102]

From *Gibbons* until the late 1800's, the broad interpretation of the Commerce Clause implemented by Justice Marshall continued, as the United States Supreme Court had little opportunity to consider the power of the federal government to regulate under the Commerce Clause. However, in the early part of the twentieth century, the United States Supreme Court handed down a multitude of decisions closely scrutinizing the ability of the federal government to regulate under the Commerce Clause. In *Houston East and West Railway Co. v. United States*[103] (the "Shreveport Rate Case"), the United States Supreme Court upheld the right of the Interstate Commerce Commission to prevent railroad companies from setting rates for hauls totally within Texas.[104] The United States Supreme

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PROD. SAFETY COMM'N, AMUSEMENT RIDE RELATED INJURIES AND DEATHS IN THE U.S.: 1987-1999 (July 2000) at 4.

98. 22 U.S. 1 (1824).
99. *Id.* at 2-3.
100. *Id.*
101. *Id.* at 239-40.
102. *Id.* at 237-40.
103. 234 U.S. 342 (1914).
104. *Id.* at 359-60.

Court recognized that the rate-setting by the railroad companies for intrastate routes in Texas was discriminating against interstate traffic and held that the commerce power gives the federal government the right to "regulate all matters having a close and substantial relation to interstate traffic [such] that control is essential or appropriate to the security of that traffic."[105]

In addition to the regulation of intrastate commerce, the federal government also frequently attempted to use the Commerce Clause to prohibit the interstate shipment of certain goods in the early part of the twentieth century. Given this frequent regulation, the United States Supreme Court was presented with a multitude of opportunities to scrutinize the powers of the federal government under the Commerce Clause. However, the United States Supreme Court did not seem to stray from the view presented in the "Shreveport Rate Case," and, consequently, the federal government was granted wide power to prohibit the interstate shipment of certain goods. In *Champion v. Ames*[106] (the "Lottery Case"), the United States Supreme Court upheld the Federal Lottery Act which, using the Commerce Clause as a "jurisdictional hook," prohibited the interstate shipment of lottery tickets on the theory that such prevention was justified in order to regulate the moral character of the nation.[107] Extending this view, the United States Supreme Court

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105. *Id.* at 351. Apparently the fact that the Interstate Commerce Commission sought to regulate solely intrastate activity did not place such regulation beyond congressional control. According to the United States Supreme Court:

> The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field.

Id. at 351-52.

106. 188 U.S. 321 (1903).

107. *Id.* at 357. Specifically, the majority reasoned:

> As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one state to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those states — perhaps all of them — which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of

upheld the right of the federal government, pursuant to the Pure Food and Drug Act of 1906 (which also used the Commerce Clause as a "jurisdictional hook"), to seize adulterated eggs once they had arrived at their point of destination in *Hipolite Egg Co. v. United States*.[108]

Eventually, however, the United States Supreme Court began curtailing the broad power of the federal government to regulate under the Commerce Clause, as indicated by a series of decisions handed down between 1918 and 1937. For example, in *Hammer v. Dagenhart*[109] (the "Child Labor Law Case"), the United States Supreme Court struck down a federal statute which essentially prohibited the interstate transportation of articles made by companies who employed child labor.[110] In *Schechter Poultry Corp. v. United States*[111] (the "Sick Chicken Case"), the United States Supreme Court invalidated the conviction of Schechter under the National Industrial Recovery Act on the grounds that the federal government could not constitutionally regulate Schechter's activities because his activities were not within the current stream of commerce and did not directly affect interstate commerce.[112] In another defeat for the

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> lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the states, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce.

Id.

The authority of the federal government to use the Commerce Clause of the United States Constitution to regulate the moral character of the nation was not limited to the regulation of lottery tickets. For example, the United States Supreme Court held that the federal government could constitutionally prohibit the transportation of women in interstate commerce for immoral purposes. *See* Caminetti v. United States, 242 U.S. 470 (1917). Similarly, the United States Supreme Court upheld the power of the federal government under the Commerce Clause to regulate the transportation of intoxicating liquors. *See* Clark Distilling Co. v. Western Maryland Railway Co., 242 U.S. 311 (1917).

108. 220 U.S. 45 (1911).

109. 247 U.S. 251 (1918).

110. *Id.* The United States Supreme Court distinguished this case from the "Lottery Case," stating that in the "Lottery Case" the federal government was prohibiting the interstate transportation of the evil itself (the lottery tickets) but that in the instant case the federal government was prohibiting the interstate transportation of a by-product of the evil itself (the companies utilizing child labor). *See id.* at 272-73.

111. 295 U.S. 495 (1935).

112. *Id.* at 550. The National Industrial Recovery Act essentially gave the President the power to adopt codes of fair competition for various trades or industries. *See* GERALD GUNTHER AND KATHLEEN SULLIVAN, CONSTITUTIONAL LAW 116-17 (13th ed. 1997). Specifically:

> The National Industrial Recovery Act provides that "codes of fair competition," which shall be the "standards of fair competition" for the trades and industries to which they relate, may be approved by the President upon application of representative associations of the trades or industries to be affected, or may be prescribed by him on his

federal government, a majority of the United States Supreme Court in *Carter v. Carter Coal Co.*[113] (the "Carter Coal Case") struck down the ability of the federal government to use the Commerce Clause as a means to set maximum hours and minimum wages for workers in coal mines.[114]

Decisions by the United States Supreme Court, like those in the Child Labor Case, the Sick Chicken Case, and the Carter Coal Case, represent the beginnings of the modern trend in Commerce Clause analysis by the Court.[115] Under this modern analysis, the United States Supreme Court analyzes Commerce Clause cases by looking at the effect the regulated activity has on interstate commerce.[116] Furthermore, the United States Supreme Court now requires that the federal government, when regulating under the Commerce Clause, use a reasonable means to achieve a stated goal.[117] The case best illustrating how the Court will employ this modern analysis is *United States v. Lopez*.[118]

In *Lopez*, the defendant was charged with the knowing possession of a firearm in a school zone, in violation of the Gun-Free

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own motion. Their provisions are to be enforced by injunctions from the federal courts, and "any violation of any of their provisions in any transaction in or affecting interstate commerce" is to be deemed an unfair method of competition within the meaning of the Federal Trade Commission Act and is to be punished as a crime against the United States. Before approving, the President is to make certain findings as to the character of the association presenting the code and absence of design to promote monopoly or oppress small enterprises, and must find that it will "tend to effectuate the policy of this title." Codes permitting monopolies or monopolistic practices are forbidden. The President may "impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in the furtherance of the public interest, and may provide such exceptions and exemptions from the provisions of such code," as he, in his discretion, deems necessary "to effectuate the policy herein declared." A code prescribed by him is to have the same effect as one approved on application.

Schechter Poultry Corp., 295 U.S. at 296.

113. 298 U.S. 238 (1936).

114. *Id.* at 316-17.

115. *See* U.S. v. Lopez, 514 U.S. 549, 556-57 (1995).

116. For example, in 1937, the United States Supreme Court upheld the right of the National Labor Relations Board to prevent unfair labor practices by Jones and Laughlin (a large integrated steel producer) on the grounds that such unfair labor practices, although done locally, would have a substantial effect on interstate commerce given the complexity of operations by Jones and Laughlin. NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937).

117. For example, in 1941 the United States Supreme Court upheld a portion of the Fair Labor Standards Act of 1938 which made it a crime to employ workers to make goods shipped interstate at other than prescribed rates and hours on the grounds that such a provision was a reasonable means of preventing goods made by "cheap" labor from being shipped in interstate commerce. U.S. v. Darby, 312 U.S. 100 (1941).

118. 514 U.S. 549 (1995).

School Zones Act of 1990, which "prohibit[ed] any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone."[119] The issue before the United States Supreme Court was whether the Gun-Free School Zones Act was a valid exercise of the federal government's power to regulate commerce under the Commerce Clause.[120] A majority of the United States Supreme Court struck down the statute, by a five to four vote, on the ground that the statute was unconstitutional.[121] The majority (after first reviewing the activity that the federal government can permissibly regulate under the Commerce Clause) reasoned that in order for the Gun-Free School Zones Act to be within the confines of the Commerce Clause, the Act must be directed at an activity which substantially affects interstate commerce (as opposed to activity that simply affects interstate commerce).[122] The majority then noted that the activity being regulated by the Gun-Free School Zones Act was not commercial and, as a result, for the statute to be constitutional there must be an obvious connection between the activity being regulated by the statute and interstate commerce.[123] After finding no obvious connection between the regulation of guns in school zones and interstate commerce, the United States Supreme Court struck down the

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119. *Id.* at 550.

120. *Id.* The United States District Court for the Western District of Texas found that the Gun-Free School Zones Act was a valid exercise of congressional power but the United States Court of Appeals for the Fifth Circuit disagreed, finding the Act granted the federal government powers beyond the scope of the United States Constitution. *See id.*; U.S. v. Lopez, 2 F.3d 1342 (5th Cir. 1993).

121. *Lopez*, 514 U.S. at 567-68.

122. *Id.* at 559-60. Under previous decisions by the United States Supreme Court, federal government regulation under the Commerce Clause is limited to activities affecting the "channels" of interstate commerce, activities affecting the "instrumentalities" of interstate commerce, and to activities "substantially affecting" interstate commerce. Here, the United States Supreme Court concluded that if the Gun-Free School Zones Act was to be a valid exercise of congressional power under the Commerce Clause, it must be designed to regulate an activity which "substantially affects" interstate commerce. Specifically, the majority noted:

> The first two categories of authority may be quickly disposed of: [The Gun-Free School Zones Act] is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can [the Gun-Free School Zones Act] be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus if [the Gun-Free School Zones Act] is to be sustained, it must be under the third category as regulation of an activity that substantially affects interstate commerce.

Id. at 559.

123. *Id.* at 559-60.

statute.[124]

Under the modern view of Commerce Clause analysis as exemplified in *Lopez*, the federal government can constitutionally regulate three categories of activities under the Commerce Clause: (1) the "channels" of interstate commerce; (2) the "instrumentalities" of interstate commerce; and (3) any activities which have a "substantial effect" on interstate commerce.[125] While the first two are relatively uncomplicated, the latter is a bit more difficult to apply because, under the *Lopez* decision, a distinction must be made between federal regulation of commercial activity that substantially affects interstate commerce and federal regulation of non-commercial activity that substantially affects interstate commerce.[126] Where the activity being regulated is clearly a commercial one substantially affecting interstate commerce, the United States Supreme Court will likely allow federal government regulation (even if the activity being regulated, such as in the "Shreveport Rate Case," is completely intrastate).[127] However, if the federal government is attempting to regulate a non-commercial activity that affects interstate commerce, the government will have to show an obvious connection between the regulation and interstate commerce in order for the regulation to be held constitutional.[128] Using this modern analysis, may the federal government constitutionally regulate permanent amusement rides under the Commerce Clause?

The strongest support for the proposition that the federal government can regulate amusement rides permanently fixed to a site under the Commerce Clause stems from the decision by the United States Supreme Court in *Daniel v. Paul*.[129] In *Daniel*, the petitioners filed a class action suit, relying on Title II of the Civil Rights Act of 1964, to enjoin the respondent from denying them access to an amusement park that the respondent owned and operated in Little Rock, Arkansas.[130] Specifically, the petitioners contended that

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124. *See id.* at 567-68. The United States Supreme Court rejected an argument by the government that there was an obvious and substantial connection between carrying firearms in school zones and interstate commerce. The government argued that: (1) possession of a firearm in a school zone results in crime and (2) the resulting crime affects the national economy because it inhibits the willingness of individuals to travel and produces less educated citizens. *Id.* at 563-64.

125. *See id.* at 559.

126. *Lopez*, 514 U.S. at 566.

127. *See id.* at 565-68.

128. *See id.*

129. 395 U.S. 298 (1969).

130. *Id.* at 300.

they were denied access on racial grounds and that because the amusement park operated by the respondent was a public accommodation within the meaning of Title II of the Civil Rights Act of 1964, the federal court was required to grant appropriate relief.[131] Because Title II prohibits racial discrimination only at places of public accommodation whose operations affect commerce, one of the principal issues in the case became whether operations at the amusement park did, in fact, affect commerce.[132]

In addressing the issue, Justice Brennan, writing for the majority, offered several reasons why the operations at the amusement park affected commerce. First, Justice Brennan examined the type of advertising which was done by the amusement park and concluded that because the advertising media selected by the amusement park was intended to seek "broad-based patronage" of individuals from significant distances, it would be unrealistic to assume that that amusement park entertained no interstate travelers during the course of its season.[133] Second, the majority determined that because a substantial portion of the food served at the snack bar in the amusement park moved in interstate commerce, the amusement park itself could be viewed as a public accommodation under Title II of the Civil Rights Act of 1964.[134] Finally, the Court reasoned that the amusement park was a place of entertainment and that many of the items used to entertain the patrons (such as the paddle boats and juke box records) were either manufactured outside of the state or were purchased by the amusement park from out-of-state vendors.[135]

However, because *Daniel* represents a pre-*Lopez* decision, it is necessary to analyze the constitutionality of federal government regulation of permanent amusement rides further by seeing how *Daniel* relates to *Lopez*. In doing so, it becomes clear that if the federal government is to be able to constitutionally grant power to the CPSC to investigate rides at amusement parks, the activities of amusement parks (such as the advertising, entertainment provided, and materials used in constructing the rides) must significantly affect interstate commerce. Clearly, this is the case. In terms of advertising, numerous parks around the country seek broad-based patronage through their advertising. For example, the official web

131. *Id.*
132. *See id.* at 302.
133. *Id.* at 304.
134. *Daniel*, 395 U.S. at 304-05.
135. *Id.* at 308.

sites of many parks provide directions on how to get there from locations outside of the state of the amusement park or from the nearest airport to the amusement park.[136] In addition, many of these advertisements (that are often for new rides) do, in fact, peak the interest of out-of-state residents who then travel to the park.[137] Furthermore, when a major new ride opens, publications from around the country often cover the opening of the ride, thereby again spurring interest and encouraging travel to the location of the park with the new ride.[138] Finally, many of these new rides are made with parts from states outside of the state where the ride is located and by manufacturers who do not regularly do business in the state where the ride is located.[139] Therefore, given the broad-based patronage that many amusement parks seek and the fact that ride parts come from a variety of suppliers who are often located significant distances from where the ride is located, the federal government can likely regulate rides at America's amusement parks consistent with the Commerce Clause of the Untied States Constitution.

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136. *See, e.g.*, *Busch Gardens* (visited Mar. 11, 2001) <http://www.buschgardens.com> (detailing how to get to Busch Gardens in Williamsburg, Virginia, from a variety of states including Georgia, North Carolina, Maryland, and Pennsylvania); *Cedar Point* (visited Mar. 11, 2001) <http://www.cedarpoint.com> (describing how to get to Cedar Point in Sandusky, Ohio, from a variety of states in the east including Georgia, Illinois, Maryland, North Carolina, and Pennsylvania); *Dorney Park and Wildwater Kingdom* (visited Mar. 12, 2001) <http://www.dorneypark.com> (providing web users with directions on how to get to Dorney Park in Allentown, Pennsylvania, from northeastern states such as New Jersey and New York); *Kennywood* (visited Mar. 11, 2001) <http://www.kennywood.com> (providing directions on how to get to Kennywood Park just outside of Pittsburgh, Pennsylvania, from a number of states including Ohio and Maryland and also from Pittsburgh International Airport); *Silverwood Theme Park* (visited Mar. 13, 2001) <http://www.silverwood4fun.com> (discussing the close proximity of Silverwood Theme Park in Athol, Idaho, to the Spokane International Airport in Spokane, Washington).

137. *See* Peg Batchelder, *A Beautiful Day at the Lake*, ACE NEWS (THE OFFICIAL NEWSLETTER OF THE AMERICAN COASTER ENTHUSIASTS), July-Aug. 2000, at 17 (stating that advertisements and reports on the "Boulder Dash!" roller coaster prompted nearly 300 individuals from twenty states to attend a special gathering at Lake Compounce Family Theme Park in Bristol, Connecticut, where the "Boulder Dash!" roller coaster is located).

138. *See, e.g.*, Alice Lukens, *A Roller-Coaster Ride on Safety*, THE BALTIMORE SUN, May 22, 2000, at 2A (discussing the opening of the "Millennium Force 2000" at Cedar Point in Sandusky, Ohio); Cindy Stout, *HURRICANE Hits Myrtle Beach*, ACE NEWS (THE OFFICIAL NEWSLETTER OF THE AMERICAN COASTER ENTHUSIASTS), July-Aug. 2000, at 12 (describing what it feels like to ride the "Hurricane" roller coaster at the Myrtle Beach Pavilion in Myrtle Beach, South Carolina).

139. *See generally* THE AMERICAN COASTER ENTHUSIASTS, GUIDE TO RIDE 2000 (Digital Prepress, 2000) (providing a comprehensive summary of the statistics on each roller coaster in the United States, including the manufacturer of the roller coaster).

B. Current State Laws Are Inadequate and Inconsistent

As Table B illustrates, states vary widely in their approach to regulating amusement rides, particularly those that are permanently attached to a site. For example, in states such as Ohio, Pennsylvania, and New Jersey, regulation is routine and rigorous.[140] However, in states like Alabama, Missouri, and Montana, regulation of rides permanently fixed to a site is non-existent.[141] In addition, states vary with respect to the burden on ride owners to record and report serious accidents. Currently, thirteen states have no laws requiring owners to report injuries, and in the remaining thirty-seven states that do, the definition of a "reportable injury" can vary widely.[142] For example, suppose that a patron sustains an injury while riding the "Ferris Wheel" at Dorney Park in Allentown, Pennsylvania. While Dorney Park (given the rigid requirements which the Amusement Ride Inspection Act sets forth) may have to report the incident to the Department of Agriculture, if a rider sustained the same accident at Six Flags in St. Louis, Missouri, the park may not have to report the accident due to the lack of any legal duty to do so.[143] Due to the inconsistencies in reporting, it is very difficult for state safety officials to pinpoint which rides and which parks are having safety problems and to warn patrons accordingly.[144]

In addition, the inconsistency in state inspection procedures of amusement rides has resulted in great disparities. According to *USA Today*, in states where inspections are rigorous, "inspectors routinely find problems, shut down rides, and report fewer serious accidents."[145] However, even in states that require inspections, some types of parks and carnival rides are exempt.[146] For example, under the Florida statute regulating amusement rides, parks are to be inspected twice a year, but a clause in the statute exempts

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140. *See* N.J. STAT. ANN. §§ 5:3-32-5:3-39 (West 1996); OHIO REV. CODE ANN. §§ 1711.50-1711.58, 1711.99 (West 1997); 4 PA. STAT. ANN. §§ 401-19 (West 1995).

141. *See* Best's Review, *State Regulation and Inspection of Amusement Rides* (visited Mar. 11, 2001) <http://www.bestreview.com/pc/1999-09/chrtstatereg1.html>.

142. *See* Anthony DeBarros and Gene Sloan, *Park Safety Rules Lax*, USA TODAY, Apr. 7, 2000, at 1A (discussing the inadequacies and inconsistencies in current state laws regulating the amusement industry).

143. *Compare* MO. REV. STAT. § 316.209 (2000), *and* MO. REV. STAT. §316.212 (2000), *with* 4 PA. STAT. ANN. § 407 (West 1995), *and* 4 PA. STAT. ANN. § 413 (West 1995).

144. *See* DeBarros and Sloan, *supra* note 141.

145. *See id.*

146. *See id.*

America's most popular theme park, Disney World.[147] These inconsistencies and exemptions also contribute to the inability of safety officials to pinpoint which rides are causing problems.

C. *The Amusement Industry Does Not Have the Situation Under Control*

Not surprisingly, the amusement industry, which generated $9.6 billion in 1999, stands starkly opposed to any federal interference with the regulation of permanent amusement rides. In May of 2000, the president of the International Association of Amusement Parks and Attractions (IAAPA) made this view known when he testified before a congressional subcommittee that the amusement industry is already "effectively and adequately regulated" by the states.[148] During this testimony, the president of the IAAPA also questioned the results of the CPSC study, stating that the numbers generated by the CPSC in its annual report on amusement accidents do not actually reflect an increase in injuries, but merely a change in the method of data collection (a contention that the CPSC strongly opposes).[149] In addition to pointing to current state legislation and questioning the federal data, industry experts argue the industry has a strong incentive to regulate itself since notable accidents (like the six deaths in 1999) result in decreased patronage which in turn decreases industry profit.[150] However, these industry arguments fail on three principal counts.

First, it is clear that many states "have simply failed to step in where the federal agency has been excluded."[151] Several states still have no laws regulating permanent amusement rides and others have cleverly structured their laws to exempt the major players in the industry from any regulation whatsoever.[152] Other states impose very minimal restrictions on the operation of permanent amuse-

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147. *See id.*

148. *See* Jared Costanza (Amusement Ride Accident Reports and News), *Markey Pushes For Common Sense Federal Oversight of Park Rides* (visited Mar. 11, 2001) <http://www.members.aol.com/rides911/2000.htm#may16>.

149. *See id.*

150. *See* DeBarros and Sloan, *supra* note 141. According to the IAAPA president, amusement parks "already have rigorous safety inspections both in-house and by their insurance companies. If anybody is slipshod and injuring great numbers, they are not going to get insurance. They are not going to stay in business." *See id.*

151. *See* 145 CONG. REC. E2042 (daily ed. Oct. 6, 1999) (statement made by Representative Edward Markey of Massachusetts when introducing "The National Amusement Park Ride Safety Act").

152. *See* DeBarros and Sloan, *supra* note 141.

ment rides and a remaining few states still leave regulation to private inspectors.[153]

Second, the states "are not equipped and not inclined to act as a national clearinghouse of safety problems associated with particular rides or with operator or patron errors."[154] Since the CPSC is charged, under the Consumer Product Safety Act, with protecting the public against dangerous products, it only makes sense to allow the CPSC to act as a national clearinghouse. Yet federal law currently forbids the CPSC from doing so. As a result, there is currently no uniform system for reporting ride accidents, which makes it difficult for safety inspectors to pinpoint which rides often pose a danger to the public.[155]

Finally, because the industry argues safety is of primary concern (given that unsafe parks result in decreased attendance and, hence, decreased profit), it is senseless for the industry to oppose limited federal regulation of permanent amusement rides that could lead to a reduction in accidents. As noted earlier, in states where inspections are rigorous (such as New Jersey), safety inspectors are better able to detect ride-related problems; hence, fewer serious accidents are reported in those states.[156]

CONCLUSION

Over the past decade and a half, thrill-rides at America's amusement parks have become the premier attraction for millions of Americans who flock to parks from coast to coast in anticipation of experiencing the new thrilling sensations that modern day scream machines provide. There certainly has been no shortage of supply of such thrills by the amusement industry, as ride manufacturers continue to crank out new rides and revamp old ones to meet increasing consumer demand.[157] In the process, many modern

153. *See id.*

154. *See* 145 CONG. REC. E2042, *supra* note 150.

155. *See* DeBarros and Sloan, *supra* note 141.

156. *See supra* note 144. For example, in New Jersey, which three years ago changed its laws regarding inspection of permanent amusement rides, serious accidents (defined as those resulting in a broken bone or worse) have been cut in half, from twenty-four in 1997 to twelve in 1999. *See* DeBarros and Sloan, *supra* note 141.

157. An example of revamping an older ride can be found at Kennywood Park, located just outside of Pittsburgh, Pennsylvania. The park recently announced that its "Steel Phantom" roller coaster, which opened in 1991, will be partially rebuilt and will reopen in April of 2001 as "The Phantom's Revenge." *See* Laura Pace, *Kennywood Not Letting the Phantom Steal Away—Smoother, Faster Coaster to Include Parts of Old One*, PITTSBURGH POST GAZETTE, Aug. 11, 2000, at C1. Roughly 738 roller coasters are currently in operation from coast to coast. Approximately sixty-one new roller coasters opened in the year 1999 and

day scream machines now take consumers on journeys to record-breaking heights at speeds that were only once dreamed of by consumers and ride manufacturers.[158] In the process, many modern rides challenge the limits of human endurance, and, unfortunately, the steady increase in accidents at America's amusement parks suggests what has intuitively been known for decades—the human body can only be pushed so far.[159] Furthermore, despite the significant advance in technology that has seemed to spar the thrill-ride renaissance of the past decade and a half, technology still remains fallible. When technology fails on a modern day scream machine, the results can be catastrophic.

While there will always be a demand for such rides and while the

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fifty-five more opened between January 1, 2000, and October 11, 2000. *See The Roller Coaster Data Base* (visited Mar. 11, 2001) <http://www.rcdb.com> (a comprehensive searchable database with information and statistics on roller coasters in North America).

158. For example, in 1989, Cedar Point, in Sandusky, Ohio, debuted the "Magnum XL-200," which at the time was the tallest, fastest, and steepest roller coaster in the world with a height of 201 feet, a vertical drop of roughly 195 feet, and a speed of seventy miles per hour. Nearly a decade later, another Cedar Point roller coaster set the record for the tallest, fastest, and steepest roller coaster in the world. The "Millennium Force 2000" opened on May 13, 2000, as the tallest, fastest, and steepest steel roller coaster in the world with a height of 310 feet and an estimated speed of ninety-two miles per hour. *See* Richard P. Carpenter, *Roller Coasters—Tallest And Steepest*, BOSTON GLOBE, Apr. 8, 1990, at B10 (discussing the tallest and fastest roller coasters in the world in 1990); Jefferson Graham, *Magnum Force—It's the Ultimate Coaster So Far*, USA TODAY, May 8, 1989, at 1D (a ride review of "Magnum Force XL-200" at Cedar Point in Sandusky, Ohio); Alice Lukens, *A Roller-Coaster Ride On Safety*, THE BALTIMORE SUN, May 22, 2000, at 2A (discussing the "Millennium Force 2000" as well as the National Amusement Ride Safety Act that is currently pending in the United States House of Representatives).

159. There is some indication that the high g-forces associated with roller coasters can trigger brain trauma in even the healthiest of individuals. *See* Evan Harlper, *Ride at Your Own Risk*, GOOD HOUSKEEPING, July 2000, at 87 (discussing the internal injuries that one rider sustained while riding the "Steel Force" roller coaster, advertised by Dorney Park in Allentown, Pennsylvania, as the "longest, tallest, and fastest roller coaster in the northeast"). As a result, many politicians have begun to question the high-speed intensity of many modern thrill-rides. For example, Representative Edward Markey (the sponsor of "The National Amusement Ride Safety Act") contacted the director of the National Institutes of Health in March, 2000, by letter seeking a baseline for judging the rapidly rising g-forces on roller coasters. Markey wrote about modern-day roller coasters in part:

> Not only are these giant coasters exempt from federal safety legislation, they also operate without any consensus, within the industry or the public health community, about the point at which brain trauma can be triggered in healthy children or adults simply from the snap of the neck or the pressure on blood circulation generated by high g-forces. The industry may think it is thrilling to operate without "g-force" standards, but the pediatric, medical, and public health communities need to be the ultimate judges of what is medically safe for our children.

See Press Release, The Office of Ed Markey (United States Congress), *Markey Requests National Institutes of Health Research Potential for Brain Injuries from Riding Roller Coasters* (March 10, 2000) (on file with author).

amusement industry has every right to continue to provide thrill-seekers with new challenges to overcome, one way to curtail the negative effects of the thrill-ride renaissance of the past decade and a half is to restore power to the CPSC to regulate rides permanently fixed to an amusement site. Specifically, the United States Congress should adopt "The National Amusement Ride Safety Act" as introduced by Representative Edward Markey, which amends the Consumer Product Safety Act in a manner that does just that. The United States Congress should do this for three principal reasons. First, CPSC regulation of amusement rides permanently fixed to a site would not be inconsistent with the Commerce Clause of the United States Constitution. Second, such regulation would eliminate the gross disparities and inadequacies exemplified by current state laws regulating fixed amusement rides. Finally, federal regulation would benefit consumers by ensuring that fixed amusement rides are adequately inspected and may also increase the overall profit of the amusement industry (assuming that such regulation would reduce the number of ride-related accidents and fatalities).

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TABLE A: SELECTED RECENT ACCIDENTS AT AMERICA'S THEME PARKS		
DATE	LOCATION	DESCRIPTION OF THE ACCIDENT
February 22, 1997	Las Vegas, NV	A three-year old girl suffered fatal head injuries after falling from the "Sizzler" ride and becoming trapped beneath another car
April 20, 1997	Tulsa, OK	A fourteen-year old boy was killed (and five others injured) when two cars collided on the "Wildcat" roller coaster
August 9, 1997	Houston, TX	A fifty-one year old maintenance worker was struck by a train while examining a piece of track on the "Excalibur" roller coaster (the train had been sent out for a test run but a signal failed to inform the worker of the train's presence on the track)
April 18, 1998	Gurnee, IL	Twenty-three riders on the "Demon" roller coaster were stranded upside down for hours as a result of a mechanical failure (four passengers were treated and eventually released)
August 1, 1998	St. Paul, MN	A twelve year old boy was killed after falling from a log flume ride (the ride, similar to others like it, was not equipped with a seat belt or restraint mechanism)
August 5, 1998	Clementon, NJ	Three people were injured after the "Jack Rabbit" roller coaster on which they were riding jumped the track and crashed into the management office (the park blamed the accident on the actions of the operator who was subsequently arrested)
March 21, 1999	Arlington, TX	A twenty-eight year old female died when the boat she was riding on capsized, trapping her underneath (the official cause of death was listed as drowning)
June 11, 1999	Brooklyn, NY	A seventeen-year old female was killed on the "Super Himalaya" roller coaster after the car in which she was riding flipped over and tossed her ten to fifteen feet in the air before pinning her on the track under another car
July 17, 1999	Kansas City, MO	Eight riders were treated after the last two cars of the "Orient Express" roller coaster derailed
August 22, 1999	Santa Clara, CA	A twelve-year old boy was killed after slipping out of his harness while riding the "Drop Zone" freefall ride
August 23, 1999	Doswell, VA	A twenty-year old male was killed in an accident on the stand-up "Shockwave" roller coaster
June 30, 2000	Muskegon, MI	A thirty-eight year old female sustained critical injuries as a result of a fall sustained on the "Zach's Zoomer" roller coaster after she turned around in her seat to take pictures (signs around the ride indicated picture taking was not allowed)
July 19, 2000	Gurnee, IL	Two teenage girls were injured when the floor on the "Cajun Cliffhanger" ride was raised at the wrong time, causing the girls to get their feet caught between the wall and rising floor

August 18, 2000	Wildwood, NJ	A nineteen year old worker lost his leg after getting it entangled in the track of the "Monster Mash" ride, a dark ride located on the Wildwood boardwalk
September 22, 2000	Anaheim, CA	A four-year old boy was rushed to the hospital in critical condition after falling out of his car while riding Disneyland's "Roger Rabbit" ride
September 24, 2000	Crete, NB	Ten were injured when a swinger ride partially collapsed
Source: Amusement Ride Accident Reports and News (visited Oct. 11, 2000) <http://members.aol.com/rides911/accidents.htm>.		

TABLE B: SELECTED PROVISIONS OF STATE STATUTES REGULATING AMUSEMENT RIDES

STATE	REQUIREMENTS FOR OPERATION	INSPECTION REQUIREMENTS
Alabama	None	None
Alaska	$1 million liability policy required for tramways and rides	Performed by Alaska Department of Labor
Arizona	None	None
Arkansas	$1 million liability policy required	Current safety inspection by Arkansas Department of Labor; inspections at setup
California	Annual operating permit	Mobile rides inspected once a year; aerial tramways inspected twice a year
Colorado	Permits for the particular year	Inspection performed by state, insurance companies, and private firms
Connecticut	Application for inspection required	Annual inspection by professional engineer, inspection of mobile carnival rides at each new site
Delaware	Electrical inspections required for each carnival setup	No specific guidelines for inspection; inspection by insurance companies
Florida	Safety inspection required	Mobile rides inspection at each set up; stationary parks inspected each season (excludes parks that employ 1,000 or more full-time employed workers and have safety inspectors approved by state)

TABLE B: SELECTED PROVISIONS OF STATE STATUTES REGULATING AMUSEMENT RIDES CONTINUED

STATE	REQUIREMENTS FOR OPERATION	INSPECTION REQUIREMENTS
Georgia	Stationary parks require $500,000 bodily injury liability; carnivals require $1 million liability	Inspected at opening of year and spot checked several times thereafter
Hawaii	Certificate of inspection required	Rides inspected every six months by certified state inspectors
Idaho	Permits required	Inspection required for each setup
Illinois	Permits, inspections, and liability insurance required	Annual inspections with unannounced follow-up inspections required
Indiana	Permits and licenses required	Rides inspected on first setup each year
Iowa	Annual license required	Inspected at setup and then annually or spot checks thereafter
Kansas	None	None
Kentucky	Permit required	One annual inspection required by state
Louisiana	Permit required	Inspections twice a year
Maine	Permits and inspection for license	Annual inspection of stationary rides; inspection of mobile rides at setup and when reassembled
Maryland	Certificate of insurance required	Annual inspection of stationary rides, inspection of mobile rides at setup and when reassembled
Massachusetts	Annual permit for mobile rides	Mobile rides inspected
Michigan	Annual permit required	Annual inspection

TABLE B: SELECTED PROVISIONS OF STATE STATUTES REGULATING AMUSEMENT RIDES CONTINUED

STATE	REQUIREMENTS FOR OPERATION	INSPECTION REQUIREMENTS
Minnesota	$1 million minimum insurance required per occurrence	Requires a certificate of insurance or affidavit of inspection
Mississippi	License required for tax purposes	None
Missouri	None	None
Montana	None	None
Nebraska	Annual permit required	Inspected annually by the state if not done by qualified insurance company or private inspector
Nevada	Individual city can set requirements	By city code inspectors
New Hampshire	Registration and license required	Mobile and stationary rides inspected by independent inspector before registration; subsequent annual and intermittent inspections by state
New Jersey	Mobile and stationary rides licensed; certificate of insurance required	Inspections before each season; mobile rides inspected as soon as possible following setup at each location
New Mexico	Inspections and insurance certificates required; $3 million liability required per ride	Annual inspections by National Association of Amusement Ride Safety Officials Inspector
New York	Permits required for mobile and stationary rides; certificate of insurance required	Annual inspection of stationary rides; mobile rides inspected at all stops
North Carolina	Permit required	Semi-annual inspection of stationary rides; mobile rides inspected at each setup
North Dakota	Insurance required	None

TABLE B: SELECTED PROVISIONS OF STATE STATUTES REGULATING AMUSEMENT RIDES CONTINUED

STATE	REQUIREMENTS FOR OPERATION	INSPECTION REQUIREMENTS
Ohio	permit and certificate of insurance required	Rides inspected before issuance of license; depending on firm's history, rides must be inspected at each subsequent license
Oklahoma	Annual registration, insurance required	Stationary rides inspected annually; mobile rides inspected each time they are setup
Oregon	Annual permit	Annual inspection of stationary and mobile rides
Pennsylvania	Registration and certificate of inspection required	Rides must be inspected by a certified inspector every thirty days or at every setup; inspections conducted by state inspectors on a frequent and random schedule
Rhode Island	Certificate to operate issued by local building or electrical inspector	Annual—generally, insurance companies conduct their own inspections but in an accident/incident situation, state building officials will investigate
South Carolina	Permit and $500 liability insurance required	Annual and unannounced inspection; operator inspections also
South Dakota	Permit required	None
Tennessee	Permit required only for tramways and ski lifts	Six-month inspection required for tramways and aerial rides
Texas	Insurance requirement	Annual inspection (inspectors required to be professionally qualified by insurer)
Utah	None	None
Vermont	Certificate of operation required; $1 million certificate of insurance required	None

TABLE B: SELECTED PROVISIONS OF STATE STATUTES REGULATING AMUSEMENT RIDES CONTINUED

STATE	REQUIREMENTS FOR OPERATION	INSPECTION REQUIREMENTS
Virginia	Permit required from the local building department for the re-assembly or operation of an amusement device	Inspections required before each operation, after any major modification or after each assembly; inspections performed only by inspectors that have met Virginia's certification requirements
Washington	Annual operating permits and license required; must maintain liability insurance	Annual safety and mechanical inspection; electrical inspection before each setup
West Virginia	Mobile ride license required at time of each setup; stationary rides require annual license; $1 million certificate of insurance required	None
Wisconsin	Annual registration	Seasonal inspections for stationary and mobile rides; re-inspection when violations are found
Wyoming	None	None

Source: Best's Review, *State Regulation And Inspection of Amusement Rides* (visited Mar. 10, 2001) <http://www.bestreview.com/pc/1999-09/chrtstatereg1.html>.